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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

In re L.T. et al., Persons
Coming Under the Juvenile
Court Law.

2d Juv. No. B295132
(Super. Ct. Nos. 18JV00162,
18JV00163, 18JV00164
& 18JV00165)
(Santa Barbara County)

SANTA BARBARA COUNTY
CHILD WELFARE SERVICES,

Plaintiff and Respondent,

v.

A.M. et al.,

Defendants and Appellants.

A.M. (Mother) and A.M (Father) appeal the juvenile court's orders denying return of their four children (L.T., L.D., A.M., and N.M.) and continuing family reunification services. Mother and Father contend the court erred when it found returning the children to their custody would create a

“substantial risk of detriment” to the children’s safety, protection, or well-being. (Welf. & Inst. Code,¹ § 366.21, subd. (e).) We affirm.

FACTS AND PROCEDURAL HISTORY

Current Domestic Violence Incident

In April 2018, Mother was arrested for domestic violence.² Mother and Father had been drinking and began to fight. Mother bit Father on the arm, leaving a bite mark, and slapped him across the face.

The next day, a social worker went to Mother and Father’s home. A.M. and N.M. were sleeping next to pieces of a plastic fan that broke during the fight. L.T. said that during the fight, she “took all of the children in her bedroom and tried to distract them and tell them they were ok.” All the children were scared. The social worker determined the children would not be safe in Mother and Father’s care and took them into protective custody.

Prior Domestic Violence Incidents

In August 2015, the Santa Barbara County Child Welfare Services (CWS) received a referral alleging that Mother was arrested for driving under the influence, child endangerment, and domestic violence charges. The family was visiting another person’s home when Mother “had too much to drink.” Mother and Father began to fight, and Mother hit Father

¹ Further unspecified statutory references are to the Welfare and Institutions Code.

² The disposition report states that criminal charges against Mother for inflicting corporal injury on spouse and willful cruelty to a child were pending as of May 31, 2018.

on the head with a beer bottle, causing an injury that required stitches. While intoxicated, Mother drove a vehicle with Father and the children as passengers. Mother was later convicted of domestic violence and child endangerment and placed on probation. CWS substantiated the allegations of general neglect. It did not file a petition, but instead provided Voluntary Family Maintenance Services to Mother and Father. (§ 301, subd. (a).)

In September 2016, CWS received a referral alleging that Father was arrested for domestic violence. Mother reported that Father verbally abused her in front of the children and then broke kitchen cabinets and the children's laptops. L.T. grabbed a diaper bag and began packing, but Father grabbed the bag, threw it, and said that no one was leaving the house. Mother tried calling law enforcement, but Father broke her phone. Father was later convicted of domestic violence and placed on probation. CWS substantiated the allegations of general neglect and emotional abuse, and provided Voluntary Family Maintenance Services. (§ 301, subd. (a).)

Jurisdiction/Disposition Proceedings

CWS filed a petition alleging that Mother and Father failed to protect the children and that there was a serious risk of the children suffering serious emotional damage based on the current and two prior domestic violence incidents. (§ 300, subds. (b) & (c).) With respect to the two prior incidents, the petition alleged CWS opened Voluntary Family Maintenance cases for each incident and provided substance abuse and domestic violence services to Mother and Father. Nonetheless, Mother and Father "returned to alcohol use and continued to engage in domestic violence in the presence of the children." The petition alleged Mother had a criminal history of domestic abuse, and was

on probation for the August 2015 incident at the time of the current incident. The petition also alleged Father was on probation for the September 2016 domestic violence incident.

At the jurisdictional hearing, the juvenile court found the allegations against Mother and Father true. At the disposition hearing, the court ordered the children to remain in out-of-home care and ordered reunification services for Mother and Father.

Mother and Father's case plan objectives include: (1) not engaging in any forms of domestic violence, (2) showing their willingness and ability to have custody of their children, which includes maintaining a sufficient source of income and a "stable and suitable residence," and (3) staying sober.

Six-month Report and Hearing

In December 2018, the six-month status report stated that Mother and Father were participating in therapy, domestic violence prevention programs, and substance abuse treatment. They were consistent with their visits with their children, and they developed a visitation plan for overnight visits.

The report stated that Mother quit her job in August 2018 and was unemployed. On July 13, Father moved to Texas for a job, but returned to California on July 31. He was then unemployed until December, when he accepted a job at a local car dealership.

Mother and Father were evicted from their home in May. In July, Mother moved into a hotel. Father moved into the hotel with Mother when he returned from Texas. The social worker referred them to homeless resources and advised them to save money for housing. They did not utilize those resources and ran out of money to pay for the hotel. Mother and Father moved

into a homeless shelter on November 5. The shelter allowed children to reside with their parents while the parents looked for long-term housing. Father and Mother obtained approval for section 8 housing, but they had yet to find a home where they could redeem their voucher. Their only car was repossessed in December.

CWS recommended that the children remain in out-of-court placement and that Mother and Father continue receiving reunification services. CWS noted that Mother and Father demonstrated progress, but they “struggled with housing stability” and “declined to utilize homeless supportive service that may have helped them stabilize . . . sooner.” CWS also noted that Mother and Father “have only resided at the shelter for approximately four weeks . . . , they have yet to demonstrate consistency over a substantial period of time for [CWS] to support reunification.”

One month later, at the six-month review hearing, the social worker testified that Mother and Father found a studio apartment, but the section 8 program had yet to approve or inspect the residence. Although the landlord was aware of two adults and four children living in the apartment, the only tenants on the lease agreement were Mother and Father. The lease stated that it could be terminated if anyone else was found living in the apartment.

With respect to visits, the children had only recently begun overnight visits for a minimum of two nights per week with each child (N.M. and A.M. together on one night, L.T. and L.D. together on another night, and all four children another night per week).

The social worker recommended continuation of reunification services so CWS could implement a “progressive visitation plan,” which would allow a smooth transition “while also monitoring the parents['] consistency.” The social worker testified that in the past, Mother and Father “did well for a short period of time and then something happened and either they lost their housing or there was an incident that led to concerns of safety. . . . [¶] So [CWS’s] recommendation is to continue to monitor consistency in all the areas that have been discussed as part of their case plan.”

The juvenile court adopted CWS’s recommendation and ordered the children to remain in out-of-home placement and continued Mother and Father’s reunification services.

DISCUSSION

Mother and Father contend the juvenile court erred when it found that returning the children to their custody would pose a substantial risk of detriment to the children. We disagree.

At a six-month review hearing, the juvenile court shall order the return of a child to the custody of the parent unless the court finds by a preponderance of evidence that the return would create a substantial risk of detriment to the safety, protection, or well-being of the child. The social worker has the burden of establishing risk of detriment. (§ 366.21, subd. (e).) We review the court’s finding regarding risk of detriment for substantial evidence. (*In re Mary B.* (2013) 218 Cal.App.4th 1474, 1483 (*Mary B.*)) In doing so, we view the evidence in the light most favorable to the prevailing party. (*Ibid.*)

Substantial evidence supports the juvenile court’s finding that returning the children to Mother and Father’s custody posed a substantial risk of detriment. Mother and

Father had a history of engaging in domestic violence in the presence of their children. Two times in the past, Mother and Father received Voluntary Family Maintenance services, but they “returned to alcohol use and continued to engage in domestic violence in the presence of the children.”

Moreover, for most of the review period, Mother and Father did not have stable housing or finances. They were evicted from their home in May, temporarily moved into a hotel, and then moved into a homeless shelter in November. While they were living in a hotel, Mother and Father opted not to utilize the CWS-recommended homeless resources, which may have helped with their housing and financial stability. At the time of the six-month review hearing in January 2019, Mother and Father had been living in a studio apartment for approximately two weeks, but it had not yet been approved for section 8 housing.

Mother and Father were unemployed for most of the review period. Mother left her job in August and remained unemployed thereafter. In July, Father left for a job in Texas, but he returned to California at the end of the same month and was then unemployed for four months. At the time of the six-month hearing, he had been working in a new job for only four weeks. Under these circumstances, it was reasonable for the juvenile court to find a substantial risk of detriment in returning the children to Mother and Father’s custody because “it was too soon” to determine whether they could provide a safe and stable home for their children. (*Mary B.*, *supra*, 218 Cal.App.4th at p. 1484 [substantial risk of detriment finding at a six-month review affirmed where the father complied with the case plan and participated in domestic violence classes, but the court found it was “too soon” to determine “whether he had actually changed”].)

Mother and Father argue the juvenile court erred because the evidence showed they “succeeded at every aspect of their reunification plan.” Father compares this case with *In re E.D.* (2013) 217 Cal.App.4th 960, 966, where the father completed reunification services, engaged in all court-ordered counseling and therapy, and “worked diligently to overcome the effects of the domestic violence incident” that led to the dependency proceedings. Because the “juvenile court did not cite [to] *any* evidence” of detriment, the Court of Appeal concluded the evidence did not support the juvenile court’s finding of detriment. (*Ibid.*, original italics.)

Unlike *E.D.*, there was substantial evidence here to support the finding of detriment. Although Mother and Father were making progress in their case plan, “[c]ompliance with the reunification plan . . . is not the sole concern” in determining whether a substantial risk of detriment exists. (*Constance K. v. Superior Court* (1998) 61 Cal.App.4th 689, 704-705, 708 [denying minor’s return to the mother’s custody at a 18-month hearing despite “compliance in virtually all respects with the reunification plan” because “mother had never had custody of any of her eight children on a full-time basis and been drug free” and other evidence showed she would be “unable to cope with the return” of her children].) Given Mother and Father’s history of domestic violence, their relapse to alcohol abuse and violent behaviors, and their difficulty maintaining a stable home and financial support for their children, the court properly found substantial risk of detriment in returning the children to the parents’ custody.

Father also argues that the trial court did not specify a factual basis for its finding of substantial risk of detriment.

But the court specified that its finding was based on the “very tenuous” nature of Mother and Father’s housing and employment status and that visitation with all four children had only recently begun at the home.

Mother argues this case is like *In re Yvonne W.* (2008) 165 Cal.App.4th 1394, where, at the 18-month review hearing, the evidence showed the mother complied with her services, maintained her sobriety for over a year, was safely caring for another child, and was living in “appropriate housing.” (*Id.* at pp. 1399-1401.) The juvenile court found a substantial risk of detriment based on the child’s “expressed fear, anxiety[,] and unhappiness about living in the shelter.” (*Id.* at p. 1401.) The Court of Appeal reversed, holding there was insufficient evidence to support a finding of detriment. Because nothing in the record showed the shelter’s conditions posed a risk of harm, the child’s mere dislike of the shelter was insufficient to support a finding of detriment. (*Id.* at p. 1402.)

Unlike *Yvonne W.*, where the mother demonstrated over the period of 18 months her ability to safely care for her child at the homeless shelter, Mother and Father did not maintain a stable home or employment for the majority of the review period and had only recently changed their circumstances and participated in overnight visits in their new home. Mother and Father had yet to prove that they could provide a safe and stable home environment for their children on a sustained basis.

DISPOSITION

The judgment (order denying the children's return to Mother and Father's custody) is affirmed.

NOT TO BE PUBLISHED.

TANGEMAN, J.

We concur:

GILBERT, P. J.

YEGAN, J.

Arthur A. Garcia, Judge

Superior Court County of Santa Barbara

Patricia G. Bell, under appointment by the Court of
Appeal, for Defendant and Appellant A.M. (Mother).

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